Supreme Court, U.S.
FILED

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No. 05-75775

In The Supreme Court of the United States

Mealdey Suong
PETITIONER

v.

Eric H. Holder, Jr., Attorney General
RESPONDENT

ON A PETITION FOR A WRIT OF CERTIORARI TO
THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether an Immigration Judge erred when her credibility determination ignored plausible explanations and drew impermissible negative inferences from documentary evidence.

2. Whether the Immigration Judge erred by allowing adverse credibility determinations to foreclose independent examination of Petitioner's Convention Against Torture claim.

3. Whether the Board of Immigration Appeals erred when it summarily affirmed a decision that presents novel factual elements and important legal questions.

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties to the proceeding in Court whose judgment is sought to be reviewed.

Petitioner is Mealdey Suong.

Respondent is Eric H. Holder, Attorney General.

CORPORATE DISCLOSURE STATEMENT

As this case does not involve any business entity, there is no parent corporation or publicly held company that owns 10% or more of a relevant corporation's stock.

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In The Supreme Court of the United States

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Mealdey Suong
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ON A PETITION FOR A WRIT OF CERTIORARI TO
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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Mealdey Suong, by counsel, respectfully petitions for a writ of certiorari to review the March 19, 2010, order of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The order of the court of appeals denying the Petitioner's petition for review, dated March 19, 2010, is unreported. (App. A, infra, 1a-3a). The order of the Board of Immigration Appeals, dated

September 7, 2005, is unreported. (App. C, *infra*, 6a). The order of the immigration judge, dated February 18, 2005, is unreported. (App. D, *infra*, 7a-23a).

JURISDICTION

The judgment of the court of appeals was entered on March 19, 2010.(App. A, *infra*, 1a-3a) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to S.C. Rule 14.1(f), the pertinent text of various sections of the Immigration and Nationality Act of 1952, as amended, shall be set out in the appendix to this petition.

STATEMENT OF THE CASE

An Immigration Judge's credibility determination is deserving of deference, but not when those determinations are unsupported by the record. In addition, an Immigration Judge must analyze claims under the Convention Against Torture distinctly and may not simply rely upon a previous finding in determining eligibility for asylum and withholding of removal. Finally, the Board of Immigration Appeals errs when it affirms a case without opinion in which material and manifest errors exist in the record.

I. Statutory Background

Article 18 of the Convention Against Torture provides that the United States shall not "expel, return ('refouler') or extradite" a person to another state where he or she would be tortured. Ratified by the United States Congress and signed by President Clinton, the provisions of the Convention Against Torture came into effect on October 21, 1994.

8 C.F.R. § 1208.16(c), Immigration and Nationality Act Section (INA) 241(b)(3)(B) codifies the relief of withholding of removal under the Convention Against Torture. Under Section 1208.16(c), an alien cannot be removed to a country where it is more likely than not he or she will be tortured. Courts reviewing claims under this section may consider (i) evidence of past torture, (iii) evidence of "gross, flagrant or mass violations of human rights", and (iv) any other relevant information regarding country conditions.

8 C.F.R. § 1003.1(e)(4)(i) provides for a "streamlined" decision structure by which a single member of the BIA may review an appeal and issue an affirmance without opinion if (1) the decision was correct, (2) any errors in the decision were harmless, and (3) issues on appeal are controlled by existing Board or Federal Court precedent and do not involve a novel factual situation, or (4) the factual and legal issues raised

are not substantial enough to merit a written opinion.

II. Factual Background

The Respondent, Mealdey Suong is a native and citizen of Cambodia born on September 14, 1969. The Respondent entered the United States at Los Angeles, California, on February 20, 2002 with a B2 visitor visa.

Respondent timely filed an asylum application with the Asylum Office on November 27, 2002. Removal proceedings were commenced when a Notice to Appear was issued on July 30, 2003. She was charged with removability pursuant to 8 U.S.C. § 1227(a)(1)(B), INA § 237(a)(1)(B) as a nonimmigrant who remained in the United States longer than permitted. Respondent was unable to attend a master calendar hearing on September 2, 2003, due to exceptional circumstances beyond her control, and she was ordered removed *in absentia*. She then filed a Motion to Reopen on September 6, 2002.

At a master calendar hearing on February 17, 2004, the Respondent admitted to the allegations contained in the Notice to Appear and requested asylum, withholding of deportation, Convention against Torture relief, and voluntary departure, as affirmative relief from removal. The Respondent presented the merits of her asylum claim at an individual hearing before the Immigration Court in San Francisco, California, on May 5, 2004. The hearing was continued to May 11, 2004. On that day,

her applications for asylum, withholding of removal, and voluntary departure were denied. The Respondent filed a timely appeal of the Immigration Judge's decision with the Board of Immigration Appeals (The "BIA" or "Board"). The Board affirmed without opinion the Immigration Judge's decision on September 7, 2005.

The Respondent next filed a Petition for Review with the Ninth Circuit Court of Appeals on March 10, 2010. By decision dated March 19, 2010, the Ninth Circuit affirmed the Board.

REASONS FOR GRANTING THE PETITION

The decision of the Board of Immigration Appeals was manifestly contrary to law and an abuse of discretion in denying the Petitioner's applications for asylum, withholding of removal, and protection under CAT. Pursuant to Rule 10 of the Rules of the Supreme Court of the United States, the Petitioners asserts that the Fourth Circuit's decision, in the context of an application for asylum and withholding of removal in which the Petitioner's life and physical safety are at issue, is a compelling reason for this Court to take his case.

Immigration Judges are afforded great deference and upon review courts afford great weight to the credibility determinations made by these judges; however, a system of review is necessary and proper to the proper functioning of

the immigration system, and when an immigration judge's credibility determination is unsupported by the record, that determination must be set aside. Likewise, eligibility determinations for protection under Article 18 of the Convention Against Torture ("CAT") must be reviewed to ensure the Immigration Judge has properly considered that claim distinctly from the other forms of relief alleged. Finally, the BIA's decision to affirm an immigration judge without opinion should be done only in circumstances where the underlying decision is correct and any alleged errors are harmless.

This Court should grant this petition because the Immigration Judge (1) abused her discretion by ignoring direct testimony by Ms. Suong and dismissing plausible explanations for apparent discrepancies, (2) neglected to completely and properly consider the CAT claim distinctly from Ms. Suong's application for asylum and withholding of removal, and (3) because the BIA improperly entered a summary affirmance without opinion in a case that contained clear errors.

I. The Ninth Circuit Improperly Dismissed The Petitioner's Claim by Adopting the Immigration Judge's Credibility Determination

The Ninth Circuit erred as a matter of law in accepting the Immigration Judge's ("IJ") finding regarding Ms. Suong's credibility because the IJ's

credibility determination was based on clearly erroneous findings. An IJ's credibility determination must be "based on specific, cogent reasons that bear a legitimate nexus to the finding." Zahedi v. INS, 222 F.3d 1157, 1165 (9th Cir. 2000)(citation omitted). Any inconsistencies cited by an IJ must be specific and concrete and "go to the heart of [the] asylum claim." Singh v. Ashcroft, 301 F.3d 1109, 1111 (9th Cir. 2002)(internal quotation omitted).[1] Here, Ninth Circuit supported the IJ's adverse credibility determination on three specific factual misstatements: (1) Ms. Suong did not discuss a death threat made against her by the Cambodian People's Party ("CPP") which Ms. Suong mentioned in her declaration. (2) The fact that letters she brought with to prove her membership in the Sam Rainsy Party ("SRP") were apparently incorrectly dated, and (3) the "inconsistent" testimony given by Ms. Suong regarding the number of times she was followed by the CPP.

First, the Ninth Circuit erred in relying on the IJ's determination of credibility below on this alleged error as the IJ was clearly wrong. At the hearing Ms. Suong testified that she had been followed at work on several occasions. This testimony is consistent with her declaration in which she describes receiving death threats. A

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[1] This case is reviewed under the law as it existed before the passage of the REAL ID Act of 2005.

plain reading of the facts suggests that Ms. Suong was "threatened" at work by the multiple times she was followed.

Indeed, the declaration itself, written in broken English, is still consistent with this reading. The declaration states "I became strongly support for the city council election, I went village to village, city to city to campaign for Sam Rainsy Party. The CPP located the place I work and threaten to kill again." This declaration was misconstrued by the IJ to find that Ms. Suong was describing an event at her office when she was actually describing her time working for the SRP campaign. These discrepancies are clearly the result of poor translation, and the IJ and Ninth Circuit erred in giving them weight. See Kebede v. Ashcroft, 366 F.3d 808, 811 (9th Cir. 2004)(finding that discrepancies had "more to do with [the witness'] difficulties with English than with prevarication"); see also, Mendoza Manimbao v. Ashcroft, 329 F.3d 655, 662 (9th Cir. 2003) ("[W]e have long recognized that difficulties in interpretation may result in seeming inconsistencies, especially in cases... when there is a language barrier"). Because this first alleged mistake was more a translation error than a material misrepresentation, the IJ erred in finding that Ms. Suong had not testified regarding the threats mentioned in her declaration.

Second, the Ninth Circuit erred in relying on the IJ's negative inference regarding the letters

brought by Ms. Suong to demonstrate her membership in the Sam Rainsy Party ("SRP"). The Immigration Judge observed that Respondent had no explanation for why the letters verifying that she was a member of the SRP were dated May 30, 2002, and May 31, 2002. However, Ms. Suong explained this by testifying that the SRP officials who had provided her with the verification letters had mis-typed the dates on the letters. The Immigration Judge even acknowledged in her decision that Ms. Suong *did* provide an explanation for the dates of the letters.

Third, the Ninth Circuit erred in relying on the IJ's finding regarding the "inconsistent testimony" regarding being followed by the CPP. As discussed above, Ms. Suong testified that she was followed that she was followed several times, but never giving an exact number. This was not in contradiction with her prior statements and was improperly relied on by the IJ in making her credibility determination. Therefore, the IJ should have granted asylum under 8 U.S.C. § 1158 and found the Ms. Suong credible.

II. The Ninth Circuit Improperly Dismissed The Petitioner's Claim by Adopting the Immigration Judge's CAT Determination

Ms. Suong should be granted relief under the Convention Against Torture. The Immigration

Judge stated that "[g]iven the discredit that respondent has brought to herself by her manner of testimony the Court is not really in a position to address or locate or identify other aspects of her case that would more likely than not result in her mistreatment if she were to return." Ms. Suong did not testify in an incredible manner. She gave detailed, plausible testimony about being threatened and followed by the SRP, being beaten in jail when she was detained for ten days, and having her house shot at by the CPP. Moreover, the fact that she was found to be incredible regarding her asylum claim does not mean that she is automatically incredible as to her other claims. Ramsameachire v. Ashcroft, 357 F.3d 169, 184-86 (2d Cir. 2004).

The IJ and Ninth Circuit misapplied the legal standard to Ms. Suong's CAT claim by relying on prior adverse credibility findings and failing to adequately segregate the CAT claim for distinct analysis. As the Ninth Circuit itself has recognized, CAT claims must be viewed distinctly from other forms of relief, and it is insufficient to deny a CAT claim merely because an applicant is found not credible as a part of the asylum claim. See Kamalthas v.INS, 251 F.3d 1279, 1283 (9th Cir. 2001).

Although the IJ decision briefly addressed Ms. Suong's CAT claim, it did not adequately consider the application of the credible evidence, country conditions, or overall likelihood of torture upon Ms. Suong's return to Cambodia. In this case, the failure to properly and completely address the CAT claim presented by Ms. Suong was clear error and wrong as a matter of law.

The purpose of requiring an IJ to separately consider a CAT claim stems from the severity of the possible outcome if an alien is returned to their country of origin. The Senate has recognized that the purpose of CAT is to "eliminate torture and other cruel, inhuman or degrading treatment or punishment." S. Exec. Rep. No. 101-30, at 3. See also 8 CFR §1208.18. When courts bundle together CAT claims with other forms of relief, this conflation can lead to a defeat of the essential protection offered by that convention and thereby undermine the Congressional mandate.

In this case, Ms. Suong gave credible, plausible testimony regarding her father's murder, being threatened by and followed by the CPP, and being detained for ten days without food. All these actions took place at the hands of or with the acquiescence of government officials, and were properly before the IJ when she made her decision.

Moreover, Ms. Suong testified that she was a member of the SRP and had participated in propaganda campaigns on several occasions. The IJ "accept[ed]" that Ms. Suong was likely a member of the SRP and that her father had "evidently" been "tortured and killed by the Kimer Rouge;" however, in the next breath, the IJ dismissed these facts *because of* "the discredit that [Ms. Suong] has brought to herself by her manner of testimony." By allowing Ms. Suong's prior demeanor as she testified to unrelated events bias the CAT analysis, the IJ ignored undisputed evidence that clearly supported a finding that Ms. Suong was eligible for relief under CAT. The IJ clearly erred in not evaluating this evidence and properly considering Ms. Suong's CAT claim in isolation from her asylum claim.

III. The Ninth Circuit Improperly Dismissed The Petitioner's Claim by Affirming the BIA's Opinion

The BIA may affirm a decision without opinion only under limited circumstances. 8 C.F.R. § 1003.1(e)(4)(i). When the BIA issues such decisions, it generally surrenders the right to defend the IJ's determinations and instead is rests wholesale on the logic and reasoning of the IJ. Reyes Reyes v. Ashcroft, 384 F.3d 782, 786 (9th

Cir. 2004)(internal citations omitted).

Moreover, the BIA may not affirm without opinion unless the IJ's decision was correct and any errors contained in the decision were harmless. 8 C.F.R. § 1003.1(e)(4)(i). In addition to not having any errors, the IJ's decision must fall into one of two subsections in order to merit a summary affirmance. Under subsection (A), the issues presented must be squarely controlled by existing law and the decision must not present a novel factual situation. Under subsection (B), the IJ Decision may be summarily affirmed if the issues raised on appeal are not substantial enough to merit a written decision.

In each case, the BIA is tasked with issuing summary affirmances only under narrow and limited exceptions. Here, the BIA decision did not enumerate which subsection it relied on to make its determination. Therefore, the Court may look to either subsection for support. However, because the decision of the IJ below contained important legal questions regarding the sufficiency of the IJ's analysis and application of the CAT protections, the BIA erred in issuing a summary affirmance.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 17, 2010

APPENDIX

APPENDIX A

FILED: March 19, 2010

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 05-75775

Agency No. A096-155-975

MEALDEY SUONG,

Petitioner

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 10, 2010**
San Francisco, California

Before: HUG, REINHARDT and BYBEE, Circuit Judges

Mealdey Suong, a native and citizen of Cambodia, petitions for review of the Board of Immigration Appeals' ("BIA") summary affirmance of the Immigration Judge's

("IJ") denial of her application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). Where the BIA affirms the IJ's decision without issuing an opinion, we review the IJ's decision. *Lanza v. Ashcroft*, 389 F.3d 917, 924 (9th Cir. 2004). We have jurisdiction under 8 U.F.C § 1252. We review the IJ's adverse credibility findings for substantial evidence and may reverse only if the evidence compels a contrary conclusion. *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992). We affirm.

The IJ denied Suong's applications for asylum and withholding of removal, finding that she failed to testify credibly in support of her claims. Substantial evidence supports the IJ's adverse credibility determination. The IJ found that petitioner stated in her declaration that the Cambodian People's Party ("CPP") threatened to kill her at her workplace, but she did not mention this death threat during testimony before the IJ. The IJ also found that petitioner testified that she brought letters showing her Sam Rainsy Party ("SRP") membership when she first entered the United States, but the letters are dated after her arrival date. Finally, the IJ found that petitioner provided inconsistent testimony regarding the number of times that she was allegedly followed by the CPP. Because the record supports the IJ's findings that there are inconsistencies regarding the death threats that petitioner recieved, the number of times that she was followed, and her SRP membership papers, the IJ's adverse credibility finding is supported. *See Goel v. Gonzales*, 490 F.3d 735, 739 (9th

Cir. 2007) (holding that the adverse credibility finding was supported based on inconsistencies); *Kohli v. Gonzales*, 473 F.3d 1061 (9th Cir. 2007)(holding that the discrepancies between petitioner's testimony, declaration and letter of membership supported an adverse credibility finding).

Because petitioner's CAT claim was based on the testimony that the IJ found not credible, and she points to no other evidence to show it is more likely than not that she would be tortured if she returned to Cambodia, her CAT claim, which the IJ separately considered, also fails. *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

Finally, petitioner failed to show that the BIA erred when it summarily affirmed the IJ's decision without opinion. *See* 8 C.F.R. § 1003.1(e)(4)(i).

AFFIRMED.

APPENDIX B

FILED: May 11, 2010

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 05-75775

Agency No. A096-155-975

MEALDEY SUONG,

Petitioner

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent

MANDATE

The judgment of this Court, entered March 19, 2010, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of the Court

Gabriela Van Allen
Deputy Clerk

APPENDIX C

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

-/

Decision of the Board of Immigration Appeals

File: A96-155-975 - San Francisco Date: SEP 7 2005

In re: SOUNG, MEALDEY (MTR/H)

IN REMOVAL PROCEEDINGS

APPEAL
ON BEHALF OF RESPONDENT: Cooper, Yunka S
Esquire

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

/s/ Frederick D. Hess
FOR THE BOARD

APPENDIX D

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
United States Immigration Court

File A 96 155 975

IN THE MATTER OF:	)	**IN REMOVAL**
	)	**PROCEEDINGS**
	)	
MEALDEY SUONG,	)	
	)	
Respondent	)	
	)	

CHARGE: Section 237(a)(1)(B) overstay of non-immigrant status.

APPLICATIONS:

Asylum; Withholding of removal; Relief under Article 3, of the Convention Against Torture and Voluntary Departure

APPEARANCES

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ON BEHALF OF U.S. IMMIGRATION & CUSTOMS ENFORCEMENT:

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ORAL DECISION OF THE IMMIGRATION JUDGE

This is the decision of the Immigration Judge. This respondent is a 34-year-old married female, a native and citizen of Cambodia. At a hearing before this Court on February 17, 2004, counsel and respondent's behalf admitted the factual allegations on the Notice to Appear which is dated July 30, 2003, and conceded removability. Respondent declined to designate a country of return if return should be required. The Court thereupon directed

that Cambodia should be the country of return based on her pleadings. As respondent has admitted the factual allegation in the Notice to Appear and has conceded removability, I find that removability has been demonstrated by clear and convincing evidence as required by Section 240(c) of the Act. In lieu of removal respondent applied for asylum, withholding of removal and relief under Article 3 of the Convention Against Torture and voluntary departure in the alternative.

The Exhibit's of the record of proceedings other than the Notice to Appear include Exhibit 2, the asylum application, 2-a, a partial copy of her passport. 2-b, a letter from the Human Resource Manager of Cambodia Brewery Limited to U.S. Embassy in Phnom Oenh, Cambodia. 2-c, A letter from Cambodia Brewery Limited, to whom it may concern. 2-d, a letter form the U.S. Information Service to the Cambodia Brewery Limited regarding the respondent. Exhibit 3, is the Human Rights Practices Report for Cambodia for the year 2003. Exhibit 4, is what appears to be respondent's letter verifying membership in the Sam Rainsy Party. Exhibit 5 os another verification letter with an English translation verifying her membership in that party. Exhibit 6, is evidence that respondent had extended her stay in the United States. Exhibit 7, is the assessment to refer by the asylum officer. Exhibit 8, is a submission from the respondent with her birth and marriage records and another translation of her membership card in the Sam Rainsy Party, and additional articles describing conditions in Cambodia. Exhibit 9, is a one page submission of an article from the Cambodia Daily, dated March 31, 1997,

describing the demonstration to which the respondent had testified and the reasons therefore. Exhibit 10, is a series of three publications that were discovered by the Court on the internet after reading the assessment to refer and realizing that information with respect tot he party was readily available on line. The first document is a brief history of the party and gives some background on the fact that in 1995, the party was developed as the Khmer Nation Party, and that the name was changed to the Sam Rainsy Party in 1998. The second article is 100 measures of the Same Rainsy Party government to benefit Cambodia which goes into excruciating detail about the various platforms and purposes of the party. And the third is a press release dated December 2, 1998, which was issued to deny involvement in military groups bu states al least one of the 10 principles that were referred to by the asylum officer in the assessment to refer.

The hearing in this matter was begun May 5, 2004 and continued to today May 11, 2004. At the hearing the respondent testified to the statutory qualification for relief as stated above. She was the only witness who testified.

STATEMENT OF THE LAW

In order to establish eligibility for asylum, a respondent must show either that she suffered past persecution and continues to have a well-founded fear of future persecution or that in the absence of past persecution she fears persecution in the future on account of one or more of the five grounds enumerated in Section 208(a) of

the Immigration and Nationality Act. Those being race, religion, nationality, membership in a particular social group or political opinion. "Persecution means that the infliction of harm or suffering upon those who differ in way regarded as offense" Sangha v. INS, 103 F.3d 1482, 1487 (9th Cir. 1997).

Credible testimony satisfies the subjective test for showing of past persecution or a well-founded of future persecution. A credible application for asylum must provide testimony that is believable, consistent and sufficiently detailed to provide a plausible and coherent account of the basis of for the fear of persecution. Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). If the applicant's testimony is deemed to be credible and stands alone in the eyes of the trier of fact, specific corroborating documentation may not be required particularly in light of the inherent difficulty in obtaining corroborating documentation from abroad, Sangha, supra, and Ladha v. INS, 215 F.3d 889 (9th Cir. 2000).

The 9th Circuit has held however that where the trier of fact does not believe the applicant or does not know what to believe, failure to provide corroborating documentation can be fatal to the asylum application. Sidhu v INS, 220 F.3d 1085 (9th Cir. 2000). See also Matter of Y-B-, 21 I&N Dec. 1136 (BIA 1998), which discusses the legitimate increase in need for documentation or a testimony is so vague, lacking in detail or contradictory that without such documentation the burden of proof cannot have been met. This is because the respondent bares the proof with respect to eligibility to asylum and

withholding. 8 C.F.R. Sections 208.12(a) and 208.16(b).

The trier of fact is charged with questioning applicants for these forms of relief about inconsistencies or omission that occur in the record during the hearing. And must determine whether the applicants explanation for these issues is reasonable as part of the credibility process. See Matter of S-M-J-, 21 I&J Dec. 722 (BIA 1997), and Matter of A-S-, 21 I&J Dec. 1106 (BIA 1998).

The Court is mindful that less than substantial inconsistencies or inconsistencies that have nothing to do with an asylum applicants fear for her safety should not be by themselves the basis for an adverse credibility finding. See Campos-Sanchez v. INS, 164 F.3d 448 (9th Cir. 1999) and Volorial-Lopez v. INS, 852 F. 2d 1137 (9th Cir. 1988).

Indeed, the trier of fact should have a legitimate articularable basis to question the respondent credibility and should offer a cogent reason for any stated disbelieve. Garrovillas v. INS, 156 F.3d 1010 (9th Cir. 1998). The trier of fact is admonished not to base an adverse credibility finding on conjecture and speculation which the 9th Circuit has stressed do not substitute for substantial evidence. Lopez-Reyes v. INS, 79 F.3d 908, 912 (9th Cir. 1996)

FINDINGS OF FACT

In arriving at a decision in this case, this Court has carefully observed respondent's demeanor while she is testified. In addition the Court has carefully analyzed respondent's testimony for consistency, detail and specificity as well as persuasiveness. The Court has

weighed respondent's demeanor and testimony against the standard set forth in 9th Circuit and Board of Immigration Appeals for precedent.

The record reflects an enormous credibility gap in this case. Respondent's claim is centered upon her allegation that sh has a well founded fear of persecution is she returns to Cambodia because of her claimed activities with the Sam Rainsy Party that resulted in her arrest for 10 days and her mistreatment and her belief that if she were to return these same elements of Cambodian society would kill her.

The Court recognizes that if respondent's testimony were taken as credible this could certainly constitute a claim that would merit serious consideration. However, in the course of respondent's testimony before this Court, the Court noted that she was evasive. That she testified in extremely vague and general ways at time. That she testified to facts that are not supported by the record. That her testimony before this Court as inconsistent and only exacerbated in this Court's view by the addition of the asylum officer's notes reflecting that her testimony there was similarly far short of the mark of finding her credible and granting her claim.

While the Court does not have the asylum office rot question with respect to how his interview was conducted there has not been an objection to the introduction of the assessment into the record, in the absence of the asylum officer's testimony. Further, the Court recognizes that these assessments are done in the normal course of business and are legitimate work produce of the Government which is

entitled to some reliability. Though is does appear that the only way it could be challenged is with some specific evidence on the part of the respondent about what might happened at the interview.

This does not appear to be an issue here because it has not been challenged but perhaps most (indiscernible) the asylum officer's assessment simply reenforces the conclusions which the Court has already drawn with respect to the respondent's testimony in court before me.

The respondent has claimed that shw as born in Cambodia in 1969, that she completed high school that she was married. That her father was killed brutally by the Kmer Rouge on 1977. And that she witnessed his death. There really is nothing in the record to contradict any of these claims by the respondent and as a matter of efficiency for th Court and in the absence of any specific challenge to these particular claims the Court will accept them.

Respondent claims that her whole family decided to support the Sam Rainsy Party in order to fight for freedom and that she joined that party which she noted was the Sam Ramsy Party in 1996 with her husband. She claimed that her mother and sisters all joined and that it was changed to the Sam Rainsy Party just before the election in 1998. Facts that are covered in the background material in Exhibit 10.

Respondent claims that she talked to countless people about the party and that she was singled out because of her gifts in being able to talk to low level working class people. She indicates that specifically at a demonstration on March 30, 1997, she was the lead off speaker in the microphone talking to about 500 people who were gathered

there in front of the senate and that she introduced the leader of the party Sam Rainsy.

She indicated that the demonstration was called in order to raise issues relating to insufficient pay for the workers and the desire to cut hours. According to the respondent, hand grenades were throw by CPP troops who attacked the rally and a number of people were injured and even killed including a bodyguard of Sam Rainsy and an American with surname of Ron Abny. The article submitted by the Government at Exhibit 9, reflects that purpose of the demonstration was to call for the creation of a supreme counsel of (indiscernible) at a constitutional counsel decided as two judicial oversight bodies which the legal observers said were crucial for the establishment of an independent judiciary and fair elections in Cambodia. These issues are a far cry from the issues which the respondent has deceived to the Court in very general terms.

Respondent claims that after the demonstration was broken up by the troops that she went to stay at her mother's home out of a concern for her safety. And stayed away from work saying she was sick. She indicates at the same time, Sam Rainsy fled to Thailand and then came to the United States and asked for help from the United States Senate. Evidently Mr. Rainsy then returned to Cambodia for 1998 election. And the respondent indicates that she and Mr. Rainsy and other party members and Buddhist monks to a tune of 10,000 protestors, protested the unfair elections and in return the government shot and killed many of the protestors and arrested a number of people including respondent according to her claim, and held her

for 10 days and tortured her. She was asked to describe the torture, she indicated that she wasn't given anything to eat that her hair was pulled that water was thrown on her and that she had scars on her shoulder and legs form beating that she received by the guards.

Respondent also claimed that she was followed after she began to support the party again in Januray 1999 by members of the CPP. Her declaration indicates that she was approached at work and threatened with being killed through she never described that in her oral testimony. She was asked to describe when she was followed and the events that she described did not involve being followed. While the declaration indicates that she went from village to village and was followed in those kinds of activities and found out at work and that her house was shot at and several other issues. What her testimony consistent of was, having been on a motorcycle after campaigning one day and having somebody else come up to her while she was on her motorcycle and threaten her. However every time she was questioned about when this occurred and in what sequence kept falling out of order. She would be asked how many times she was followed was when her house was fired upon which clearly wasn't an event that involved following in anyway that she described either in her declaration or in her oral testimony.

She would make general statements about things that happened to her and when asked about the specifics would engage in testimony that shifted from one thing to another in a manner that served to frustrate the Court's ability to make findings of fact about the basis upon which

she believes she would be harmed if she returned.

The crowning blow perhaps to her oral testimony was her insistence that she came tot he United States with letters in hand verifying her membership in the Sam Rainsy Party. Those letters being the ones in the record as Exhibit 4, Exhibit 5, respectively.

Respondent clearly entered the United States on February 20th, 2002 and testifies that she brought these letters with her. She had no explanation for why the letters are dated May 30, 2002 and May 31, 2002, respectively. And was asked questions for several minutes in several different ways before she acknowledged that there was a problem. And merely stated that the dates must be wrong she stated that she went to the head quarters of her party and got the letters before leaving Cambodia sometime around January 10, 2002 and that she did not look at the dates.

However, her testimony with respect to whether they presented to the asylum office was very convoluted and hard to follow. She at first said that she handed these letters to the asylum officer, the fact that does not have any record in the Government's or the Court's file. In fact, the asylum officer evidently asked the respondent if she had papers proving her membership and she apparently said that she did not and that she had destroyed proof because she was afraid of discovery and afraid that she would be killed.

She also told the Court that the asylum officer never asked for them. Then she testified that she gave all of these letters to together to the asylum officer the first time

and that copies of the letters were included with what she submitted. Another claim that is not supported by the record.

This contradictory and convoluted testimony did not serve the respondent well, it tended to corroborate the Court's previous belief that she was sifting in her testimony and that asylum officer's findings that she has testified in a similar way there.

Another issue for the Court was the extremely general, vague and (indiscernible) way in which the respondent testified. If she was in fact high up enough in this party to be introducing Sam Rainsy and to be thought of as gifted with respect to consolidating support for the party with masses she certainly would have been able to explain a little bit more about the goal and campaigns of the party she claimed to work so hard for. An example of her suing general statements that she couldn't back up was her claim that she was involved in putting out propaganda. This phraseology implies in this Court's view distribution of written materials. And when she was asked when she did these kinds of putting out of propaganda her only explanation was te introduction she gave to Sam Rainsy in the March of 1997 event where she only spoke for two to three minutes and then passed the mic onto him and was introducing him according to her testimony. This is not something that this Court would define as propaganda.

Later on when pushed on this issue more, she indicated that she tried to get people to vote for the party and when she was asked how she did this she basically said from one place to another. But she did not remember how

many times she might have gone out to do this kind of activity. She said that she would go out in the morning in 1998. The lack of any knowledge of the party platform was overwhelmingly poignant in the Court's deliberations here.

Respondent came up with some issues that she claims were addressed by the party such as reducing violence in the community, helping promote human rights, reallocating property, raising salaries and the like but these are not hard issues to conceive of a democratic party wishing to promote in a communist society. And certainly bear no resemblance to the extremely detailed issues raised in the Sam Rainsy Party materials.

On the basis of all these aspects of the respondent's testimony then, this Court has concluded that she is not credible. And therefore looks to documents that she provided to determine whether her testimony can be rehabilitated in some way.

Respondent has several documents at least three that I see that state that she is a member of the Sam Rainsy party. Two of which were evidently dated four months after tha date she claims to have received them. The membership card which is recent submission bears a date of March 31, 2000. And the Court does not know whether this is supposedly when she joined or whether this is an updated card or what. But membership in a party that reflects it fielded over 23,000 candidates in the population of Cambodia back in 2001, does not reflect in this Court's mind that, that by itself would be enough to rehabilitate her testimony.

It does appear to this Court that in order for

someone to be recognized and mistreated for their membership in that party, they would have to be more visible than the respondent would be with the very little knowledge she has on the party and the membership card. The Court does not believe that her evidence submitted as corroboration is sufficient enough to overcome the strong implication that she has either greatly overstated her role in this party or has outright fabricated her application.

Because of the Court's conclusion then both asylum and withholding would have to be denied. With respect to the Convention Against Torture the Court recognizes that even where an individual has been found to lack credibility where that person seeks protection under the Convention Against Torture they're entitled to have evidence of gross flagrant or mass violations of human rights in the country of removal considered apart from the asylum and withholding claims. See Kamalthas v. INS, 251 F.3d 1279 (9th Cir. 2001).

In considering these country conditions the Court has looking to determine whether it is more likely than not that someone in respondent's shoes would likely be tortured if removed to the country designated for removal. This would be torture inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Court accepts that this respondent's father was evidently tortured and killed by the Kmer Rouge and that she may well be a general member of the Sam Rainsy Party. There doesn't appear to be any other fact that this Court can consider that would affect her likelihood to be

tortured is she returned to Cambodia. I recognize that the country has a long history of brutal treatment of dissidents and other unpopular individuals. But given the discredit that the respondent has brought to herself by her manner of testimony the Court is really not in a position to address or locate or identify other aspects of her case that would more likely than not result in her mistreatment is she were to return.

I really can not say what type of mistreatment she might receive simply for having been in the United States for the past two years. That has not been addressed. And so at this point the Court has really no basis to make a finding. For all the forgoing reasons the Court would have to decline to grant relief under the Convention Against Torture as well.

Respondent has not testified to issues with respect to voluntary departure. The Court notes that her fingerprints were only taken the day before her last hearing and that there was some issue as to whether she is even presenting a valid address to the Court with respect to this Court having jurisdiction over where she lives.

Under some circumstances where an individual has established ties to the United States and simply does not appear to have met the burden but where some attempts at presenting a legitimate claim to asylum has been made, the Court is rather benign about granting voluntary departure even where testimony has not been taken on this form of relief. There are a few problems in this particular case, one is that the respondent did not follow the Court's order and take her prints until the day before her previous hearing and

the results of that inquiry have not been provided to the Government yet.

The respondent at the asylum office could not answer pretty straight forward questions about where she was living in Fresno. The respondent has clearly exaggerated or made up aspects of her claim and while the basic issues with respect to losing her father are certainly very poignant and very sympathetic, the Court is somewhat irritated about the time this case has taken given that it does not appear to be a legitimate claim. Not just because it fails to meet the requirements bu because of respondent's apparent misrepresentations.

In that circumstance but perhaps without finding that she was perjury herself, the Court does not believe that it would be appropriate in the exercise of discretion to grant asylum through it does appear that she may meet the statutory requirements, we really don't know without fingerprints, I guess. But nonetheless given her lack of ties to the United States through family members that she has described the Court will decline to grant her that form of relief.

Based on the foregoing then the following is the order of the Court.

ORDER

IT IS HEREBY ORDERED that respondent's applications for asylum, withholding of removal, relief under Article 3, of the Convention Against Torture and voluntary departure be denied.

IT IS FURTHER ORDERED that respondent be removed to Cambodia.

If respondent fails to report for removal as required, for a period of 10 years she would not be eligible for any form of relief involving adjustment of status, change of status, registry, voluntary departure or cancellation of removal, and my order would automatically become a removal order with an order to remove her to Cambodia without any further notice or proceeding.

POLLY A. WEBBER
Immigration Judge

APPENDIX E

8 C.F.R. § 1208.16 - Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

(a) Consideration of application for withholding of removal. An asylum officer shall not decide whether the exclusion, deportation, or removal of an alien to a country where the alien's life or freedom would be threatened must be withheld, except in the case of an alien who is otherwise eligible for asylum but is precluded from being granted such status due solely to section 207(a)(5) of the Act. In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

(b) Eligibility for withholding of removal under section 241(b)(3) of the Act; burden of proof. The burden of proof is on the applicant for withholding of removal under section 241(b)(3) of the Act to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows: (1) Past threat to life or freedom. (i) If the applicant is determined to have suffered past

persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence: (A) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or (B) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) In cases in which the applicant has established past persecution, the Service shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (b)(1)(i)(A) or (b)(1)(i)(B) of this section.

(iii) If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

(2) Future threat to life or freedom. An applicant

who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the asylum officer or immigration judge finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if: (i) The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and (ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or

freedom would be threatened upon return to that country.

(3) Reasonableness of internal relocation. For purposes of determinations under paragraphs (b)(1) and (b)(2) of this section, adjudicators should consider, among other things, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. These factors may or may not be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.

(c) Eligibility for withholding of removal under the

Convention Against Torture. (1) For purposes of regulations under Title II of the Act, Convention Against Torture shall refer to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105277, 112 Stat. 2681, 2681821). The definition of torture contained in 1208.18(a) of this part shall govern all decisions made under regulations under Title II of the Act about the applicability of Article 3 of the Convention Against Torture.

(2) The burden of proof is on the applicant for withholding of removal under this paragraph to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.

(3) In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to: (i) Evidence of past torture inflicted upon the applicant; (ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; (iii) Evidence

of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and (iv) Other relevant information regarding conditions in the country of removal.

(4) In considering an application for withholding of removal under the Convention Against Torture, the immigration judge shall first determine whether the alien is more likely than not to be tortured in the country of removal. If the immigration judge determines that the alien is more likely than not to be tortured in the country of removal, the alien is entitled to protection under the Convention Against Torture. Protection under the Convention Against Torture will be granted either in the form of withholding of removal or in the form of deferral of removal. An alien entitled to such protection shall be granted withholding of removal unless the alien is subject to mandatory denial of withholding of removal under paragraphs (d)(2) or (d)(3) of this section. If an alien entitled to such protection is subject to mandatory denial of withholding of removal under paragraphs (d)(2) or (d)(3) of this section, the alien's removal shall be deferred under 1208.17(a).

(d) Approval or denial of application(1) General. Subject to paragraphs (d)(2) and (d)(3) of this section, an application for withholding of deportation or removal to a country of proposed removal shall be granted if the applicant's eligibility for withholding is established pursuant to paragraphs (b) or (c) of this section.

(2) Mandatory denials. Except as provided in paragraph (d)(3) of this section, an application for withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture shall be denied if the applicant falls within section 241(b)(3)(B) of the Act or, for applications for withholding of deportation adjudicated in proceedings commenced prior to April 1, 1997, within section 243(h)(2) of the Act as it appeared prior to that date. For purposes of section 241(b)(3)(B)(ii) of the Act, or section 243(h)(2)(B) of the Act as it appeared prior to April 1, 1997, an alien who has been convicted of a particularly serious crime shall be considered to constitute a danger to the community. If the evidence indicates the applicability of one or more of the grounds for denial of withholding enumerated in the Act, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(3) Exception to the prohibition on withholding of deportation in certain cases. Section 243(h)(3) of the Act, as added by section 413 of Pub. L. 104132 (110 Stat. 1214), shall apply only to applications adjudicated in proceedings commenced before April 1, 1997, and in which final action had not been taken before April 24, 1996. The discretion permitted by that section to override section 243(h)(2) of the Act shall be exercised only in the case of an applicant convicted of an aggravated felony (or felonies) where he or she was sentenced

to an aggregate term of imprisonment of less than 5 years and the immigration judge determines on an individual basis that the crime (or crimes) of which the applicant was convicted does not constitute a particularly serious crime. Nevertheless, it shall be presumed that an alien convicted of an aggravated felony has been convicted of a particularly serious crime.

Except in the cases specified in this paragraph, the grounds for denial of withholding of deportation in section 243(h)(2) of the Act as it appeared prior to April 1, 1997, shall be deemed to comply with the Protocol Relating to the Status of Refugees, Jan. 31, 1967, T.I.A.S. No. 6577.

(e) Reconsideration of discretionary denial of asylum. In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation or removal under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him or her, the denial of asylum shall be reconsidered. Factors to be considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his or her spouse or minor children in a third country.

(f) Removal to third country. Nothing in this section or 1208.17 shall prevent the Service from removing an alien to a third country other than the

country to which removal has been withheld or deferred.

APPENDIX F

8 C.F.R. § 1003.1(e)(4)

(4) *Affirmance without opinion.* (i) The Board member to whom a case is assigned shall affirm the decision of the Service or the immigration judge, without opinion, if the Board member determines that the result reached in the decision under review was correct; that any errors in the decision under review were harmless or nonmaterial; and that

> (A) The issues on appeal are squarely controlled by existing Board or federal court precedent and do not involve the application of precedent to a novel factual situation; or
>
> (B) The factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion in the case.

(ii) If the Board member determines that the decision should be affirmed without opinion, the Board shall issue an order that reads as follows: "The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 CFR 3.1(e)(4)." An order affirming without opinion, issued under authority of this provision, shall not include further explanation or reasoning. Such an order approves the result reached in the decision below; it does not necessarily imply approval of all

of the reasoning of that decision, but does signify the Board's conclusion that any errors in the decision of the immigration judge or the Service were harmless or nonmaterial.

APPENDIX G

INA Section 208
8 U.S.C. § 1158

(a) Authority to apply for asylum

(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

(2) Exceptions:

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent

temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for granting asylum

(1) In general

(A) Eligibility

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(B) Burden of proof

(i) In general

The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion

was or will be at least one central reason for persecuting the applicant.

(ii) Sustaining burden

The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) Credibility determination

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on

the demeanor, candor, or responsiveness of the applicant or witness;
the inherent plausibility of the applicant's or witness's account,
the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(2) Exceptions:

(A) In general
Paragraph (1) shall not apply to an alien if the Attorney General determines that--

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; (ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States; (iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States; (iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States; (v)

the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have

been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children

(A) In general

A spouse or child (as defined in section 1101(b)(1) (A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be

granted the same status as the alien if accompanying, or following to join, such alien.

(B) Continued classification of certain aliens as children An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending.

(c) Asylum status

(1) In general

In the case of an alien granted asylum under subsection (b) of this section, the Attorney General–

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the

alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Termination of asylum

Asylum granted under subsection (b) of this section does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that--

(A) the alien no longer meets the conditions described in subsection (b)(1) of this section owing to a fundamental change in circumstances;

(B) the alien meets a condition described in subsection (b)(2) of this section;

(C) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality,

membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or deportability under section [FN1] 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the

Attorney General in accordance with sections 1229a and 1231 of this title.

(d) Asylum procedure

(1) Applications

The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a) of this section. The Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the Attorney General.

(2) Employment

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

(3) Fees

The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 1159(b) of this title. Such fees shall not exceed the Attorney General's costs in

adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installments. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.

(4) Notice of privilege of counsel and consequences of frivolous application

At the time of filing an application for asylum, the Attorney General shall--

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) Consideration of asylum applications

(A) Procedures

The procedure established under paragraph (1) shall provide that—

(i) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(iv) any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 1229a of this title, whichever is later, and

(v) in the case of an applicant for asylum who fails without prior authorization or in the absence of exceptional circumstances to appear for an interview or hearing, including a hearing under section 1229a of this title, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) Additional regulatory conditions.

The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter.

(C) Frivolous applications.

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice

under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

(7) No private right of action

Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.